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Colorado General Assembly

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MEMORANDUM

TO: Andrew O'Connor and Mary Henry
FROM: Legislative Council Staff and Office of Legislative Legal Services
DATE: September 20, 2017
SUBJECT: Proposed initiative measure 2017-2018 #54, concerning Severance Taxes on Oil and Gas

Section 1-40-105 (1), Colorado Revised Statutes, requires the directors of the Colorado Legislative Council and the Office of Legislative Legal Services to "review and comment" on initiative petitions for proposed laws and amendments to the Colorado constitution. We hereby submit our comments to you regarding the appended proposed initiative.

The purpose of this statutory requirement of the directors of Legislative Council and the Office of Legislative Legal Services is to provide comments intended to aid proponents in determining the language of their proposal and to avail the public of knowledge of the contents of the proposal. Our first objective is to be sure we understand your intent and your objective in proposing the amendment. We hope that the statements and questions contained in this memorandum will provide a basis for discussion and understanding of the proposal.

Earlier versions of this proposed initiative, proposed initiatives 2017-2018 #20, 2017-2108 #38, 2017-2018 #44, and 2017-2018 #46, were the subject of memoranda dated April 5, 2017, July 17, 2017, August 21, 2017, and September 1, 2017, which were discussed at public meetings on April 7, 2017, July 19, 2017, August 23, 2017, and September 7, 2017. The substantive and technical comments and questions raised in this memorandum will not include comments and questions that were addressed at the earlier meetings, except as necessary to fully understand the issues raised by the revised proposed initiative. However, the prior comments and questions that are not restated

here continue to be relevant and are hereby incorporated by reference in this memorandum.

Purposes

The major purposes of the proposed amendment to the Colorado Revised Statutes appear to be:

1. For tax years that begin on and after January 1, 2019, to make the following changes to the oil and gas severance tax:
 - a. To increase the tax rate by 5 percent;
 - b. To halve the production amounts that qualify for the stripper well exemption; and
 - c. To eliminate the credit allowed against the severance tax for property taxes paid; and
2. To modify the allocation of the oil and gas severance tax by requiring a portion of the revenue to be used exclusively for establishing all-day kindergarten and public school funding and for a new program that provides medical care and treatment for people suffering negative health impacts caused by oil and gas production in those communities impacted by oil and gas production.

Substantive Comments and Questions

The substance of the proposed initiative raises the following comments and questions:

1. In the legislative declaration in section 39-29-101 (4), C.R.S., of the proposed initiative, how did you determine the effective severance tax rate in Colorado? Is it a percentage of gross income?
2. Is the tax rate identified in the legislative declaration for New Mexico and Wyoming an effective tax rate? How did you determine this rate, which appears to be greater than the statutory rates in those states?
3. As amended, the first sentence of section 39-29-105 (1)(b), C.R.S., in the proposed initiative is a sentence fragment because the object—the tax upon gross income—has been separated into the second sentence.
4. Is it your intent that the tax described in the current version of subsection (1)(b) should apply for each taxable year commencing on or after January 1, 2000, but

prior to January 1, 2019? If so, one way to make this change would be to insert the phrase "BUT PRIOR TO JANUARY 1, 2019," after the phrase "on or after January 1, 2000," in the current law.

5. The amendments to section 39-29-108 (2), C.R.S., are to a prior version of the law, which was subsequently amended. Is it your intent to revive the prior version of the section without publishing it as required by section 24 of article V of the state constitution?
6. If it is not your intent to revive a repealed law without publishing the reenacted portion, then your amendment should be made to the following version of section 39-29-108 (2)(b), C.R.S., which is current law:

39-29-108. Allocation of severance tax revenues - definitions. (2) (b) Of the total gross receipts realized from the severance taxes imposed on minerals and mineral fuels under the provisions of this article after June 30, 2017, fifty percent shall be credited to the state severance tax trust fund created by section 39-29-109, and fifty percent shall be credited to the local government severance tax fund created by section 39-29-110.

(If you have no other changes, the new exception would be added after "June 30, 2017" in the language above.)

7. The distribution required by section 39-29-108 (2), C.R.S., applies to "total gross receipts realized from the severance taxes imposed on minerals and mineral fuels," while subsection (2.3) in the same section refers to "the total revenues levied, collected, and paid by operation of section 39-29-105 (1)(c)." For oil and gas collections, are "total revenues levied, collected, and paid" the same or different from "total gross receipts realized"?

Technical Comments

The following comments address technical issues raised by the form of the proposed initiative. These comments will be read aloud at the public meeting only if the proponents so request. You will have the opportunity to ask questions about these comments at the review and comment meeting. Please consider revising the proposed initiative as suggested below.

1. The following word is misspelled in the legislative declaration:
"EXPLOITATING".

2. It is standard drafting practice to use SMALL CAPITAL LETTERS to show the language being added to and stricken type, which appears as ~~stricken type~~, to show language being removed from the Colorado constitution or the Colorado Revised Statutes. This format was not properly utilized for the amendment to section 39-29-105 (1)(b), C.R.S., of the proposed initiative. The following shows the same paragraph in the proper format, with differences from the proposed initiative highlighted, followed by comments pertaining to the format.

39-29-105. Tax on severance of oil and gas. (1) (b) In addition to any other tax, there shall be levied, collected, and paid for each taxable year commencing on or after January 1, 2000. FOR THE TAXABLE YEARS PRIOR TO JANUARY 1, 2019, **THERE SHALL BE LEVIED, COLLECTED, AND PAID,** a tax upon the gross income attributable to the sale of oil and gas severed from the earth in this state; except that oil produced from any wells that produce ~~fifteen~~ 15 barrels per day or less of oil and gas produced from wells that produce ~~ninety thousand~~ 90,000 cubic feet or less of gas per day for the average of all producing days for such oil or gas production during the taxable year shall be exempt from the tax. The tax for oil and gas shall be at the following rates of the gross income:

Under \$25,000	2%
\$25,000 and under \$100,000	3%
\$100,000 and under \$300,000	4%
\$300,000 and over	5%

(Note the highlighting is shown only to facilitate discussion. It would not be used in the final version of a proposed initiative.)

- a. The phrase "there shall be levied, collected, and paid," is shown as existing language when it is new.
 - b. The numbers are spelled out in current law. If you prefer to show the numerals, then that would be a change to the law that should be shown.
 - c. The gross income brackets are existing law and should not be written in small caps.
3. The following language should be removed from the bottom of page 2:
- ~~"\$300,00 AND OVER ————— 10% OF TOTAL GROSS INCOME"~~
4. The following language should be removed from the first sentence in of section 39-29-105 (3):

~~"OF PARAGRAPH (C) OF SUBSECTION (1)"~~